

**United States Small Business Administration
Office of Hearings and Appeals**

NAICS APPEAL OF:

PAC Systems, Inc.,

Appellant

Solicitation No. W91151-11-R-0015

U.S. Department of the Army

Fort Hood, Texas

SBA No. NAICS-5273

Decided: August 26, 2011

APPEARANCES

Misty Green, Project Manager, PAC Systems, Inc., Arlington, Texas, for Appellant

Susheep Oden, Contracting Officer, Mission and Installation Contract Command, Fort Hood, Texas, for the U.S. Department of the Army

DECISION

I. Jurisdiction

This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134.

II. Issue

Whether the designation of North American Industry Classification System (NAICS) code 561990, All Other Support Services, to the subject solicitation was clearly erroneous. *See* 13 C.F.R. § 134.314.

III. Background

A. Introduction

On July 29, 2011, the U.S. Department of the Army, Mission and Installation Contract Command, Fort Hood, Texas (Army) issued Solicitation No. W91151-11-R-0015 (RFP) seeking fire protection services. The Contracting Officer (CO) set aside the acquisition entirely for small businesses and designated NAICS code 561990, All Other Support Services, with a corresponding size standard of \$7 million in average annual receipts.

On August 8, 2011, PAC Systems, Inc. (Appellant) filed an appeal, asserting that the appropriate NAICS code for this procurement is 561621, Security Systems Services (except Locksmiths), with a corresponding size standard of \$12.5 million in average annual receipts.

B. Performance Work Statement

The Performance Work Statement (PWS) included in the RFP provides that the contractor “shall perform all inspections, testing, maintenance, repair work, and service calls on fire protection and mass notification systems located throughout” Fort Hood. (RFP 34.) The systems to be maintained include fire alarms, sprinklers, fire pumps, foam systems, building mass notification systems, backflow prevention devices, chemical systems, fire doors, stand pipes, water supply tanks, and clean agent systems. (RFP 36-39.) Attached to the RFP are numerous technical exhibits, which detail the specific systems that the contractor will maintain, as well as the buildings in which they are located.

The contractor must perform all inspection, testing, and maintenance work on these systems, which “shall consist of maintaining continuously safe, reliable, and satisfactory operating fire protection and mass notification systems” and shall include “routine inspections, operations, checks, and adjustments.” These maintenance services should “permit the early detection and correction of items that, would: (1) Interfere with the normal effective operation of the fire protection system; (2) Endanger life and/or property; or (3) Involve high cost or long lead time for repair.” (RFP 36.) The contractor also is responsible for performing service calls at the request of the CO. “When a service call is issued, the Contractor shall either work continuously until the fire protection or mass notification system is repaired or provide a detailed report stating what repairs need to be performed to certify the system.” (RFP 40.) The contractor must provide all personnel, management, equipment, replacement items, and any other items and services necessary to perform the contract. (RFP 23, 32, 41.)

C. The Appeal

Appellant contends the appropriate NAICS code for this procurement is 561621, Security Systems Services (except Locksmiths). Appellant contends that this NAICS code encompasses the fire alarm repair and maintenance industry, and the majority of the tasks required by the RFP are fire alarm, fire sprinkler, or fire suppression maintenance tasks. Appellant explains that the tasks listed in the technical exhibits are all related to the fire protection industry and must be performed or supervised by licensed fire alarm, fire sprinkler, or fire suppression technicians. Appellant also claims that prior solicitations for similar services have employed NAICS code 561621. Appellant gives six specific examples of such solicitations issued by various federal agencies. Appellant concludes that NAICS code 561990 does not adequately represent the industry in which the work required by the RFP will be performed and urges OHA to change the NAICS code to 561621.

D. CO's Response

In response to the appeal petition, the CO explains that the Army, in consultation with

local small business officials, reviewed the applicability of various NAICS codes and concluded that NAICS code 561990 was the most appropriate code for the RFP requirements. In support, the CO submitted a market research memo reflecting this NAICS code review. The memo indicates that the contract specialist consulted the NAICS website, the Federal Business Opportunities website (<https://www.fbo.gov>), and previous contracts to determine the best NAICS code for the procurement. Additionally, the draft PWS was sent to the Office of Small Business Programs for assistance in assigning a NAICS code. The market research memo provides that the Office of Small Business Programs and the SBA Procurement Center Representative agreed that, “based upon the PWS, 561990 ... appears to be a better match than 561621.” NAICS code 561990 therefore was recommended to the CO, who agreed and assigned it to the RFP. The CO also contends that there are nine other solicitations on the Federal Business Opportunities website for similar services that use NAICS code 561990.

IV. Discussion

Appellant filed the instant appeal within ten days after the CO's designation of the NAICS code. Accordingly, the appeal is timely. 13 C.F.R. §§ 121.1103(b)(1), 134.304(a)(3). Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, Appellant must prove the CO's NAICS code designation is based upon a clear error of fact or law. 13 C.F.R. § 134.314; *NAICS Appeal of Durodyne, Inc.*, SBA No. NAICS-4536, at 4 (2003). SBA regulations do not require the CO to designate the perfect NAICS code. Rather, the CO must designate the NAICS code that best describes the principal purpose of the product or service being acquired in light of the industry description in the *NAICS Manual*,¹ the description in the solicitation, and the relative weight of each element in the solicitation. 13 C.F.R. § 121.402(b).

In this case, the *NAICS Manual* description of the code selected by the CO, 561990, All Other Support Services, provides that this industry comprises “establishments primarily engaged in providing day-to-day business and other organizational support services (except office administrative services, facilities support services, employment services, business support services, travel arrangement and reservation services, security and investigation services, services to buildings and other structures, packaging and labeling services, and convention and trade show organizing services).” *NAICS Manual*, at 788-89. Examples of such activities include “[b]artering services,” “[b]ottle exchanges,” “[l]umber grading services,” “[f]loat decorating services,” and “[d]iving services.” *Id.* at 789.

The *NAICS Manual* description of Appellant's recommended code, 561621, Security Systems Services (except Locksmiths), provides that this industry comprises “establishments primarily engaged in (1) selling security alarm systems, such as burglar and fire alarms, along with installation, repair, or monitoring services or (2) remote monitoring of electronic security alarm systems.” *NAICS Manual*, at 784.

¹ Executive Office of the President, Office of Management and Budget, *North American Industry Classification System* (2007), available at <http://www.census.gov/eos/www/naics/> (hereinafter *NAICS Manual*).

Having considered the descriptions in the *NAICS Manual* and the work contemplated by the RFP, I agree with Appellant that the selection of NAICS code 561990 was clearly erroneous. The procurement calls for the inspection, maintenance, and repair of fire alarm and fire suppression systems. Such matters plainly are within the scope of NAICS code 561621, which includes the “repair” of “fire alarms.” Meanwhile, “security” services are specifically excluded from NAICS code 561990, and the types of work cited as “examples” under NAICS code 561990 bear no resemblance at all to this procurement. *NAICS Appeal of Information Ventures, Inc.*, SBA No. NAICS-5037, at 6 (2009) (rejecting proposed use of NAICS code 561990 after finding that the “industries chosen as illustrative examples ... simply have no relation whatever to the tasks required by this solicitation.”)

V. Conclusion

For the above reasons, the instant appeal is GRANTED. The appropriate NAICS code for this procurement is 561621, Security Systems Services (except Locksmiths), with a corresponding size standard of \$12.5 million in average annual receipts. Accordingly, because this decision is being issued before the close of the solicitation, the CO MUST amend the RFP to change the NAICS code designation from 561990 to 561621. Federal Acquisition Regulation (FAR) 19.303(c)(5); *Eagle Home Med. Corp.*, B-402387, March 29, 2010, 2010 CPD ¶ 82.

This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge